

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VIII, No. 17, October 29, 2002

Attorney Fees

In a diversity action, plaintiff prevailed in his state law claim that his employer retaliated against him for seeking workers' compensation benefits. The jury awarded plaintiff approximately \$2,700 in economic damages; Judge Anna J. Brown granted a defense motion for a directed verdict against plaintiff's punitive damage claim.

Plaintiff thereafter sought attorney fees and costs of approximately \$35,000. Judge Brown applied the 8 factor test set forth in O.R.S. 20.075(1) and held that plaintiff was entitled to recover fees. The court overruled a defense objection that \$225 was an unreasonable hourly rate given that plaintiffs 2 attorneys had nearly 50 years of experience between them and given the particular circumstances of the case. The court found that even though defendant came forward with evidence that plaintiff's counsel charged others \$175/hour during the same time period, and even though the 1998 OSB Economic Survey found a \$143 median charge, the premium rate should

apply.

Judge Brown also rejected a defense argument that plaintiff should not recover for time spent awaiting the jury verdict; plaintiff's attorneys' office is located in Salem and the court required counsel to remain within 15 minutes of the courthouse during jury deliberations. However, the court did sustain defendant's objection to attorney time billed for clerical and administrative tasks such as copying and traveling to Portland to file documents. The court rejected plaintiff's argument that the lack of support staff justified attorney time, at attorney rates, for such activities. Judge Brown also denied fees for co-counsel's attendance at the pretrial conference and trial given the absence of any indication that co-counsel "meaningfully participated." Roberts v. Interstate Distributor, Co., CV 01-561-BR (Oct. 25, 2002).
Plaintiff's Counsel:

Michael D. Callahan
Defense Counsel:
Alan M. Lee

Products Liability

A refrigerator fire destroyed plaintiffs' motor home and they filed an action against the refrigerator manufacturer asserting claims for strict products liability, negligence and breach of warranty. The parties agreed that if Oregon law applied, summary judgment was warranted since plaintiffs had no proof that the refrigerator was defective. Plaintiffs urged the court to apply Ohio law since the unit was manufactured in Ohio.

Judge Ann Aiken employed a choice of law analysis and held that Oregon law applied. The refrigerator was manufactured in Ohio and the motor home was purchased in California. The accident occurred in Oregon and the plaintiffs are Oregon residents. The court held that Oregon had the greatest interest in the action and that it had the "most significant relationship" to the occurrence and the parties. Accordingly, defendant's motion for summary judgment was granted. Cioli v. Gellig Corp., CV 00-6299 (Opinion, Oct. 2002).
Plaintiffs' Counsel:

2 The Courthouse News

Carl R. Amala
Defense Counsel:
Louis L. Kurtz

Corporations

A corporation filed an action against a group of majority stockholder asserting claims for fraud, breach of fiduciary duty and usurped corporate opportunity. At issue was whether plaintiff filed the action within Oregon's 2-year fraud statute of limitations. There was no dispute that plaintiff's Chairman of the Board was aware of facts to support plaintiff's claim more than two years before the action was filed. Judge Janice M. Stewart noted that as a general rule, the corporation would be charged with this knowledge. However, plaintiff asserted an exception by arguing that its Chairman's interests were adverse to its own. Judge Stewart noted the viability of such an exception, but found that plaintiff's complaint failed to sufficiently plead such an exception. Accordingly, the court dismissed the action without prejudice and with leave to re-plead after a 60-day period of discovery. TRM Corp. v. Paulsell, CV 02-215-ST (Findings and Recommendation, June 4, 2002; Adopted by Judge Garr M. King, July 19, 2002).
Plaintiff's Counsel:
Craig Bachman
Defense Counsel:

Kerry J. Sheperd

Jurisdiction

Plaintiffs filed a class action in Multnomah County against several former Enron directors asserting claims for stock fraud. Defendants removed the action arguing that the Securities Litigation Uniform Standards Act of 1998 (SLUSA) should be applied to plaintiffs' claims and the case should be stayed and referred to a Multi-district Litigation Panel. Plaintiffs moved to remand the action.

Judge Janice M. Stewart held that defendants failed to show that SLUSA applied, since plaintiffs' claims were premised upon their status as securities holders who were injured by defendants' misrepresentations. Plaintiffs specifically excluded any claims premised upon injuries incurred by reason of misrepresentations made in connection with the purchase or sale of securities. Judge Stewart also declined to exercise supplemental jurisdiction. Accordingly, the court granted plaintiffs' motion to remand. Chinn v. Belfer, CV 02-0131-ST (Findings and Recommendation, June 19, 2002; Adopted by Judge Robert E. Jones, Sept. 23, 2002).

Plaintiffs' Counsel:
Robert S. Banks, Jr.
Defense Counsel:
Jeffrey C. Dobbins

Employment

A former apartment manager filed an action against her employer asserting age and disability discrimination. Judge Anna J. Brown granted a defense motion for summary judgment because, although plaintiff established a prima facie case of age discrimination, she failed to offer any direct or indirect evidence of pretext. Defendant offered proof that plaintiff was discharged for repeatedly violating company policy by failing to seek approval prior to working overtime, and for deception and special treatment she attempted to afford her son. The court also granted summary judgment against the disability act claim because plaintiff failed to include the claim in her BOLI complaint and because there was no evidence any decision makers for defendant were aware of her disability. Lovelace v. Guardian Management Corp., CV 01-647-BR (Opinion, Oct. 25, 2002).
Plaintiff's Counsel:
Lauren Paulson
Defense Counsel:
Alan M. Lee